

**Board of Forestry and Fire Protection  
Title 14 of the California Code of Regulations**

**[Published July 25, 2008]**

**NOTICE OF PROPOSED RULEMAKING**

**Evaluation for "Take" Avoidance of Northern Spotted Owl, 2008**

**Title 14 of the California Code of Regulations (14 CCR):**

The Board of Forestry and Fire Protection (Board) proposes to amend and adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

**Amend**

§ 895	Abbreviations Applicable Throughout Chapter
§895.1	Definitions
§ 919.9, 939.9 -	Northern Spotted Owl
§ 919.10, [939.10	Take of Northern Spotted Owl

**PUBLIC HEARING**

The Board will hold a public hearing starting at 9:00 A.M., on Wednesday, September 10, 2008, at the Resources Building Auditorium, 1<sup>st</sup> Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

**WRITTEN COMMENT PERIOD**

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., Monday, September 8, 2008. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection  
Room 1506-14  
1416 9<sup>th</sup> Street  
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

[board.public.comments@fire.ca.gov](mailto:board.public.comments@fire.ca.gov)

## **AUTHORITY AND REFERENCE**

Public Resources Code (PRC) 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561, 4584 and 21080.5.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The proposed regulation provides the Californian Department of Forestry and Fire Protection (CAL FIRE) a mechanism for obtaining biological expertise to assist in ensuring all plans located within the range of the northern spotted owl incorporate enforceable protection measures for the species. The proposed regulation ensures that (1) harvest activities do not result in the incidental take of a northern spotted owl; and (2) Plans are approved in an efficient and timely manner.

## **SPECIFIC PURPOSE OF THE REGULATION**

The purpose of the proposed regulation is to provide CAL FIRE a mechanism for obtaining biological expertise to assist in the process and still maintain scientific integrity

in the review process. The proposed regulation is necessary to ensure that (1) harvest activities do not result in the incidental take of a northern spotted owl; and (2) Plans are approved in an efficient and timely manner.

### **Section 895 Abbreviations.**

This section adds abbreviations for new definitions for 1) Activity Center, 2) Northern Spotted Owl Breeding Season, and 3) Qualified Spotted Owl Consultant. The abbreviations are necessary for clarity and brevity of rules.

### **Section 895.1 Definitions**

This section adds three new definitions: 1) Activity Center, 2) Northern Spotted Owl Breeding Season, and 3) Qualified Spotted Owl Consultant. The definition for “Activity Center” establishes criteria for determining occupancy or absence of the northern spotted owl. This definition is needed to effectuate certain northern spotted owl protection requirements stated in section 916.9 (g) and (g)(1)-(4).

The definition for "Northern Spotted Owl Breeding Season" establishes the annual period during any year when northern spotted breeding is likely to occur. This definition is needed to effectuate certain northern spotted owl protection requirements stated in section 916.9 (g) and (g)(1)-(2).

The definition for “Qualified Spotted Owl Consultant” describes the type of qualifications, training and expertise necessary for a person to be designated as a consultant to CAL FIRE for northern spotted owl habitat assessments and recommendations on whether proposed protection measures will result in a “take”. The definition is needed to ensure professional and credentialed personnel are assisting t CAL FIRE on northern spotted owl protection measures.

### **Section 919.9 [939.9] Northern Spotted Owl**

The first paragraph of this section deletes existing reference to "State Employed Biologist", and their necessary qualifications. It replaces this term with “Qualified Spotted Owl Consultant”. The amendment is necessary because the director needs qualified, professional advice on northern spotted owl protection requirements and the State does not have access to qualified State employed biologists due to fiscal constraints.

Other amendments to section 919.9 [939.9] involve 1) replacing the term "State Employed Biologist" with the abbreviation for “Qualified Spotted Owl Consultant”, and describing how the consultant will be used, and 2) adding nonsubstantive edits for consistency for section numbering and clarification of the terms used for naming the Department of Fish and Game.

The amendment to section 919.9 [939.9] (g)(2) establishes additional operating restrictions within 500 to 1000 feet of an active nest site or pair activity center. This amendment is necessary to ensure protection during the breeding season and qualified entities (DFG or a QSOC) are reviewing operations to ensure a “no take” determination.

**Section 919.10 [939.10] Take of Northern Spotted Owl**

Similar to amendments in 919.9, this section deletes existing references to a “designated biologist” and replaces this term with “Qualified Spotted Owl Consultant”. The amendments are necessary as stated in section 919.9 above.

**DISCLOSURES REGARDING THE PROPOSED ACTION**

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None are known.
- Costs or savings to any State agency: None are known.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None are known.
- Other non-discretionary cost or savings imposed upon local agencies: None are known.
- Cost or savings in federal funding to the State: None are known.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None are known.
- Potential cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulation does not impose any new operational or plan preparation requirements that would result in an adverse cost impact .
- Effect on small business: None. The Board has determined that the proposed amendments will not affect small business because the proposal adds no new operational or plan preparations cost.
- Significant effect on housing costs: None are known.
- Adoption of these regulations will not create or eliminate jobs within California.
- Adoption of these regulations will not: (1) create new businesses or eliminate existing businesses within California; or (2) affect the expansion of businesses currently doing business within California.

The proposed Rules do not conflict with, or duplicate Federal regulations.

## **BUSINESS REPORTING REQUIREMENT**

The regulation does not require a report, which shall apply to businesses.

## **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

## **CONTACT PERSON**

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460  
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action, using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout

the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

[http://www.fire.ca.gov/BOF/board/board\\_proposed\\_rule\\_packages.html](http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html)

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

/s/ Christopher Zimny

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Christopher Zimny  
Regulations Coordinator  
Board of Forestry and Fire Protection

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